

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES G. ROWLANDS,

Plaintiff,

vs.

Case No. 05-CV-72027
HON. GEORGE CARAM STEEH

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ACCEPTING REPORT AND RECOMMENDATION (#13);
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (# 11);
GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (# 9), AND
REMANDING TO THE ALJ

This matter is before the court on the parties' cross-motions for summary judgment as to plaintiff James Rowlands' claim for judicial review of defendant Commissioner of Social Security's denial of his December 12, 2002 application for disability insurance benefits. The matter was referred to Magistrate Judge Steven Whalen. On March 30, 2006, Magistrate Judge Whalen issued a 19-page Report and Recommendation recommending that defendant's motion for summary judgment be denied, and that plaintiff's motion for summary judgment be granted to the extent this matter should be remanded to the Administrative Law Judge ("ALJ"). Specifically, Magistrate Judge Whalen recommends remanding to the ALJ for a four part analysis under SSR 82-59 of the conditions which must exist to support the ALJ's conclusion that Rowlands' failure to follow his physician's advice to stop smoking constituted a "failure to follow prescribed treatment," and thus substantial evidence for denying Rowlands' claim for benefits. See 20 C.F.R. §

404.1530(b) ("If you do not follow the prescribed treatment without a good reason, we will not find you disabled . . ."). Magistrate Judge Whalen also recommends remand for additional clarification of the ALJ's reasoning, but finds that remand is warranted on this record as opposed to an immediate award of benefits. See Faucher v. Secretary of Health and Human Services, 17 F.3d 171, 176 (6th Cir. 1994) ("If a court determines that substantial evidence does not support the Secretary's decision, the court can reverse the decision and immediately award benefits only if all essential factual issues have been resolved and the record adequately establishes a plaintiff's entitlement to benefits"). No party has filed timely objections to the Report and Recommendation. See 28 U.S.C. § 636(b)(1); E.D. Mich. L.R. 72.1(d)(2).

Having reviewed the record and Report and Recommendation, and in the absence of timely objections, the court hereby ACCEPTS Magistrate Judge Whalen's well reasoned March 30, 2006 Report and Recommendation as its own. Defendant's motion for summary judgment is hereby DENIED. Plaintiff's motion for summary judgment is hereby GRANTED to the extent this matter is hereby REMANDED to the ALJ for further proceedings as outlined in the Report and Recommendation.

SO ORDERED.

s/George Caram Steeh

 GEORGE CARAM STEEH
 UNITED STATES DISTRICT JUDGE

Dated: April 25, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on April 25, 2006, by electronic and/or ordinary mail.

s/Josephine Chaffee

 Secretary/Deputy Clerk